

The Role of the Federal Supreme Court in Preventing the Exercise of the Right to Self-Determination

Authors : Shaho Ghafur Ahmed

Abstract : The right to self-determination of peoples is a fundamental human right recognized by the principles of international law. It could be embodied in the internal level in the form of federalism. Most federal constitutions prevented the secession of constituent entities, while some remained silent, as the case of Iraq, and rare instances of them recognize it. But, after the failure of federalism, these entities seek to separate whenever the opportunity arises. In several cases, they have resort to peaceful methods in some others they resort to force. The constitutional Supreme Court, which guaranty the unity and integrity of the State, often prevent these attempts. After not a commitment of federalism in Iraq, which has been founded since 2004, the Kurdistan region, as the only federated entity, has conducted a unilateral referendum on 25 September 2017 for its independence. The Iraqi government refused it. The Iraqi Federal Supreme Court, through interpreting the constitutional provisions, decided that this referendum and it's purposes, which was the independence of the region, was unconstitutional. Subsequently, the Iraqi government used forces and blockaded the region so as to force it to turn off this process. So, in this paper, the right to self-determination of the peoples in federated entities and its obstacles will be discussed through the comparative legal basis and analyzing the decisions of the Federal Constitutional Courts. We will compare the role that the Supreme Court of Canada played regarding the referendum that operated in Quebec in 1995, in which it refused only the unilaterally attempts for the independence of this province. While, in the case of the Kurdistan region, the Iraqi Federal Supreme Court has definitively refused this right. No measures were taken by this Court to protect the region from the Iraqi government reactions. This decision led to the questioning of the neutrality of this Court. So, from the point of view of the Kurdistan region, this Court became a political instrument to prevent it to be independent in the international community, in the absence of a clear constitutional provision, through an abstract and an incomplete interpretation of federal constitutional provisions.

Keywords : right of self-determination, federal supreme court, supremacy of federal constitution

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